
Ronald H. Lewis, M.D., Chair
Panel A

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8 *Attorneys for Complainant*

9
10 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the First Amended Accusation Against:

14 **JULIAN ROBERT FUENTES, M.D.**
3330 Churn Creek Road, Suite B-3
15 Redding, CA 96002

16 Physician's and Surgeon's Certificate No. G 45631

17 Respondent.

Case No. 800-2015-016567

OAH No. 2017060769

**STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER**

18
19 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
23 Board of California ("Board"). She brought this action solely in her official capacity and is
24 represented in this matter by Xavier Becerra, Attorney General of the State of California, by John
25 S. Gatschet, Deputy Attorney General.

26 2. Respondent Julian Robert Fuentes, M.D. ("Respondent") is represented in this
27 proceeding by attorney Paul Chan, Esq., whose address is:

28 ///

1 Law Offices of Paul Chan
2 2311 Capitol Ave.
3 Sacramento, CA 95816

4 3. On or about July 27, 1981, the Board issued Physician's and Surgeon's Certificate
5 No. G 45631 to Respondent. That Certificate was in full force and effect at all times relevant to
6 the charges brought in First Amended Accusation No. 800-2015-016567, and will expire on
7 September 30, 2018, unless renewed.

8 **JURISDICTION**

9 4. First Amended Accusation No. 800-2015-016567 was filed before the Board, and is
10 currently pending against Respondent. The First Amended Accusation and all other statutorily
11 required documents were properly served on Respondent on August 7, 2017. Respondent timely
12 filed his Notice of Defense contesting both the Accusation and First Amended Accusation.

13 5. A copy of First Amended Accusation No. 800-2015-016567 is attached as exhibit A
14 and incorporated herein by reference.

15 **ADVISEMENT AND WAIVERS**

16 6. Respondent has carefully read, fully discussed with counsel, and understands the
17 charges and allegations in First Amended Accusation No. 800-2015-016567. Respondent has
18 also carefully read, fully discussed with counsel, and understands the effects of this Stipulated
19 Settlement and Disciplinary Order.

20 7. Respondent is fully aware of his legal rights in this matter, including the right to a
21 hearing on the charges and allegations in the First Amended Accusation; the right to confront and
22 cross-examine the witnesses against him; the right to present evidence and to testify on his own
23 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the
24 production of documents; the right to reconsideration and court review of an adverse decision;
25 and all other rights accorded by the California Administrative Procedure Act and other applicable
26 laws.

27 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
28 every right set forth above.

1 **CULPABILITY**

2 9. Respondent understands and agrees that the charges and allegations in First Amended
3 Accusation No. 800-2015-016567, if proven at a hearing, constitute cause for imposing discipline
4 upon his Physician's and Surgeon's Certificate No. G 45631.

5 10. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
7 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
8 those charges.

9 11. Respondent agrees that his Physician's and Surgeon's Certificate No. G 45631 is
10 subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in
11 the Disciplinary Order below.

12 12. Respondent agrees that if he ever petitions for early termination or modification of
13 probation, or if an accusation and/or petition to revoke probation is filed against him before the
14 Board, all of the charges and allegations contained in First Amended Accusation No. 950-2014-
15 000312, shall be deemed true, correct, and fully admitted by respondent for purposes of any such
16 proceeding or any other licensing proceeding involving respondent in the State of California.

17 **RESERVATION**

18 13. The admissions made by Respondent herein are only for the purposes of this
19 proceeding, or any other proceedings in which the Medical Board of California or other
20 professional licensing agency is involved, and shall not be admissible in any other criminal or
21 civil proceeding.

22 **CONTINGENCY**

23 14. This stipulation shall be subject to approval by the Medical Board of California.
24 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
25 Board of California may communicate directly with the Board regarding this stipulation and
26 settlement, without notice to or participation by Respondent or his counsel. By signing the
27 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
28 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails

1 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
2 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
3 action between the parties, and the Board shall not be disqualified from further action by having
4 considered this matter.

5 15. The parties understand and agree that Portable Document Format ("PDF") and
6 facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and
7 facsimile signatures thereto, shall have the same force and effect as the originals.

8 16. In consideration of the foregoing admissions and stipulations, the parties agree that
9 the Board may, without further notice or formal proceeding, issue and enter the following
10 Disciplinary Order:

11 **DISCIPLINARY ORDER**

12 **IT IS HEREBY ORDERED** that Physician's and Surgeon's Certificate No. G 45631
13 issued to Respondent Julian Robert Fuentes, M.D. is revoked. However, the revocation is stayed
14 and Respondent is placed on probation for four (4) years on the following terms and conditions.

15 1. **EDUCATION COURSE.** Within 60 calendar days of the effective date of this
16 Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee
17 for its prior approval educational program(s) or course(s) which shall not be less than 40 hours
18 per year, for each year of probation. The educational program(s) or course(s) shall be aimed at
19 correcting any areas of deficient practice or knowledge and shall be Category I certified. The
20 educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to
21 the Continuing Medical Education (CME) requirements for renewal of licensure. Following the
22 completion of each course, the Board or its designee may administer an examination to test
23 Respondent's knowledge of the course. Each year on the anniversary of the effective date of this
24 Decision, Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours
25 were in satisfaction of this condition.

26 2. **MEDICAL RECORD KEEPING COURSE.** Within 60 calendar days of the effective
27 date of this Decision, Respondent shall enroll in a course in medical record keeping approved in
28 advance by the Board or its designee. Respondent shall provide the approved course provider

1 with any information and documents that the approved course provider may deem pertinent.
2 Respondent shall participate in and successfully complete the classroom component of the course
3 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
4 complete any other component of the course within one (1) year of enrollment. The medical
5 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing
6 Medical Education (CME) requirements for renewal of licensure.

7 A medical record keeping course taken after the acts that gave rise to the charges in the
8 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
9 or its designee, be accepted towards the fulfillment of this condition if the course would have
10 been approved by the Board or its designee had the course been taken after the effective date of
11 this Decision.

12 Respondent shall submit a certification of successful completion to the Board or its
13 designee not later than 15 calendar days after successfully completing the course, or not later than
14 15 calendar days after the effective date of the Decision, whichever is later.

15 3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
16 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
17 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
18 Respondent shall participate in and successfully complete that program. Respondent shall
19 provide any information and documents that the program may deem pertinent. Respondent shall
20 successfully complete the classroom component of the program not later than six (6) months after
21 Respondent's initial enrollment, and the longitudinal component of the program not later than the
22 time specified by the program, but no later than one (1) year after attending the classroom
23 component. The professionalism program shall be at Respondent's expense and shall be in
24 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

25 A professionalism program taken after the acts that gave rise to the charges in the
26 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
27 or its designee, be accepted towards the fulfillment of this condition if the program would have
28 been approved by the Board or its designee had the program been taken after the effective date of

1 this Decision.

2 Respondent shall submit a certification of successful completion to the Board or its
3 designee not later than 15 calendar days after successfully completing the program or not later
4 than 15 calendar days after the effective date of the Decision, whichever is later.

5 4. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this
6 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice
7 monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose
8 licenses are valid and in good standing, and who are preferably American Board of Medical
9 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
10 relationship with Respondent, or other relationship that could reasonably be expected to
11 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
12 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
13 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

14 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
15 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
16 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
17 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
18 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
19 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
20 signed statement for approval by the Board or its designee.

21 Within 60 calendar days of the effective date of this Decision, and continuing throughout
22 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall
23 make all records available for immediate inspection and copying on the premises by the monitor
24 at all times during business hours and shall retain the records for the entire term of probation.

25 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
26 date of this Decision, Respondent shall receive a notification from the Board or its designee to
27 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
28 shall cease the practice of medicine until a monitor is approved to provide monitoring

1 responsibility.

2 The monitor(s) shall submit a quarterly written report to the Board or its designee which
3 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
4 are within the standards of practice of practice, and whether Respondent is practicing medicine
5 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the
6 quarterly written reports to the Board or its designee within 10 calendar days after the end of the
7 preceding quarter.

8 At the conclusion of the second year of monitoring, the practice monitor shall submit a
9 written report to the Board which shall indicate whether the Respondent is practicing medicine
10 safely and whether areas of practice deficiency have been corrected. If the practice monitor
11 determines that Respondent no longer needs further practice monitoring and so states in the
12 written report and the Board, in its sole discretion, determines that the further practice monitoring
13 is no longer needed, this condition shall be deemed satisfied and completed and will no longer be
14 enforced as part of Respondent's probation. If the practice monitor identifies areas of continued
15 deficiency that require additional monitoring and/or the Board determines that additional practice
16 monitoring is needed, this condition shall extend for an additional year of probation.

17 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
18 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
19 name and qualifications of a replacement monitor who will be assuming that responsibility within
20 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
21 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
22 notification from the Board or its designee to cease the practice of medicine within three (3)
23 calendar days after being so notified. Respondent shall cease the practice of medicine until a
24 replacement monitor is approved and assumes monitoring responsibility.

25 In lieu of a monitor, Respondent may participate in a professional enhancement program
26 approved in advance by the Board or its designee that includes, at minimum, quarterly chart
27 review, semi-annual practice assessment, and semi-annual review of professional growth and
28 education.

Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

5. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

6. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

7. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

8. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

9. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such

addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

10. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

11. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training

1 program which has been approved by the Board or its designee shall not be considered non-
2 practice and does not relieve Respondent from complying with all the terms and conditions of
3 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
4 on probation with the medical licensing authority of that state or jurisdiction shall not be
5 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
6 period of non-practice.

7 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
8 months, Respondent shall successfully complete the Federation of State Medical Boards's Special
9 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
10 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
11 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

12 Respondent's period of non-practice while on probation shall not exceed two (2) years.

13 Periods of non-practice will not apply to the reduction of the probationary term.

14 Periods of non-practice for a Respondent residing outside of California will relieve
15 Respondent of the responsibility to comply with the probationary terms and conditions with the
16 exception of this condition and the following terms and conditions of probation: Obey All Laws;
17 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
18 Controlled Substances; and Biological Fluid Testing.

19 12. COMPLETION OF PROBATION. Respondent shall comply with all financial
20 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
21 completion of probation. Upon successful completion of probation, Respondent's certificate shall
22 be fully restored.

23 13. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
24 of probation is a violation of probation. If Respondent violates probation in any respect, the
25 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
26 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
27 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
28 continuing jurisdiction until the matter is final, and the period of probation shall be extended until

the matter is final.

14. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

15. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Paul Chan, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. G 45631. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 11/22/17


JULIAN ROBERT FUENTES, M.D.
Respondent

I have read and fully discussed with Respondent Julian Robert Fuentes, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 11/22/17


PAUL CHAN, ESQ.
Attorney for Respondent

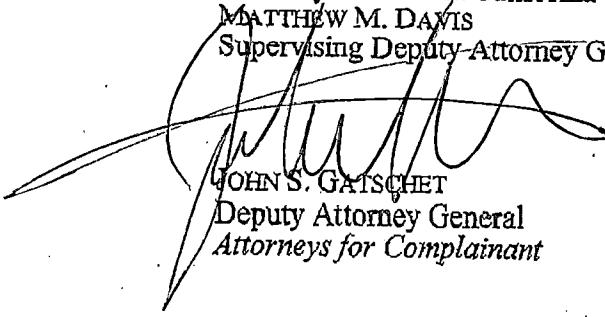
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated:

Respectfully submitted;

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General


JOHN S. GATSCHET
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2015-016567

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Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 JOHN GATSCHET
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8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 7, 2017
BY: K. Voong ANALYST

10 BEFORE THE
11 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 In the Matter of the First Amended Accusation Against:

14 **Julian Robert Fuentes, M.D.**
3330 Churn Creek Road, Suite B-3
15 Redding, CA 96002

16 Physician's and Surgeon's Certificate No. G 45631,

17 Respondent.

Case No. 800-2015-016567

FIRST AMENDED
ACCUSATION

19 Complainant alleges:

20 PARTIES

21 1. Kimberly Kirchmeyer ("Complainant") brings this First Amended Accusation solely
22 in her official capacity as the Executive Director of the Medical Board of California, Department
23 of Consumer Affairs ("Board").

24 2. On or about July 27, 1981, the Medical Board issued Physician's and Surgeon's
25 Certificate No. G 45631 to Julian Robert Fuentes, M.D. ("Respondent"). The license was in full
26 force and effect at all times relevant to the charges brought herein and will expire on September
27 30, 2018, unless renewed. On May 1, 2017, the Board filed an Accusation against Respondent's
28 license.

1 JURISDICTION

2 3. This First Amended Accusation is brought before the Board, under the authority of
3 the following laws. All section references are to the Business and Professions Code unless
4 otherwise indicated.

5 4. Section 2227 of the Code provides that a licensee who is found guilty under the
6 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
7 one year, placed on probation and required to pay the costs of probation monitoring, or such other
8 action taken in relation to discipline as the Board deems proper.

9 5. Section 2234 of the Code, states in pertinent part:

10 "The board shall take action against any licensee who is charged with unprofessional
11 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
12 limited to, the following:

13 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
14 violation of, or conspiring to violate any provision of this chapter.

15 "(b) Gross negligence.

16 "..."

17 6. Section 2242 of the Code states, in pertinent part:

18 "(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022
19 without an appropriate prior examination and a medical indication, constitutes unprofessional
20 conduct.

21 "..."

22 7. Section 2266 of the Code states, in pertinent part:

23 "The failure of a physician and surgeon to maintain adequate and accurate records relating
24 to the provision of services to their patients constitutes unprofessional conduct."

25 8. Section 3527¹ of the Code states, in pertinent part:

26 "..."

27 ¹ Effective: January 1, 2013. The previous language of section 3527, as set forth between
28 January 1, 2008, to December 31, 2012, underwent stylistic changes but no substantive changes
occurred.

1 “(c) The Medical Board of California may order the denial of an application for, or the
2 issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition
3 of probationary conditions upon, an approval to supervise a physician assistant, after a hearing as
4 required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a
5 violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations
6 adopted by the board or the Medical Board of California.

7 “...”

8 Section 3502² of the Code states, in pertinent part:

9 “(a) Notwithstanding any other provision of law, a physician assistant may perform those
10 medical services as set forth by the regulations adopted under this chapter when the services are
11 rendered under the supervision of a licensed physician and surgeon who is not subject to a
12 disciplinary condition imposed by the Medical Board of California prohibiting that supervision or
13 prohibiting the employment of a physician assistant.

14 “(b) Notwithstanding any other provision of law, a physician assistant performing medical
15 services under the supervision of a physician and surgeon may assist a doctor of podiatric
16 medicine who is a partner, shareholder, or employee in the same medical group as the supervising
17 physician and surgeon. A physician assistant who assists a doctor of podiatric medicine pursuant
18 to this subdivision shall do so only according to patient-specific orders from the supervising
19 physician and surgeon.

20 “The supervising physician and surgeon shall be physically available to the physician
21 assistant for consultation when such assistance is rendered. A physician assistant assisting a
22 doctor of podiatric medicine shall be limited to performing those duties included within the scope
23 of practice of a doctor of podiatric medicine.

24 “(c)(1) A physician assistant and his or her supervising physician and surgeon shall
25 establish written guidelines for the adequate supervision of the physician assistant. This

26
27 ² Effective: January 1, 2013, and December 31, 2015. The previous language of section
28 3502, as set forth between January 1, 2008, and December 31, 2012, underwent stylistic changes
 but no substantive changes occurred. Substantial changes were made to the statute regarding
 physician chart review in the current version of the statute made effective January 1, 2016.

1 requirement may be satisfied by the supervising physician and surgeon adopting protocols for
2 some or all of the tasks performed by the physician assistant. The protocols adopted pursuant to
3 this subdivision shall comply with the following requirements:

4 “(A) A protocol governing diagnosis and management shall, at a minimum, include the
5 presence or absence of symptoms, signs, and other data necessary to establish a diagnosis or
6 assessment, any appropriate tests or studies to order, drugs to recommend to the patient, and
7 education to be provided to the patient.

8 “(B) A protocol governing procedures shall set forth the information to be provided to the
9 patient, the nature of the consent to be obtained from the patient, the preparation and technique of
10 the procedure, and the follow up care.

11 “(C) Protocols shall be developed by the supervising physician and surgeon or adopted
12 from, or referenced to, texts or other sources.

13 “(D) Protocols shall be signed and dated by the supervising physician and surgeon and the
14 physician assistant.

15 “(2) The supervising physician and surgeon shall review, countersign, and date a sample
16 consisting of, at a minimum, 5 percent of the medical records of patients treated by the physician
17 assistant functioning under the protocols within 30 days of the date of treatment by the physician
18 assistant. The physician and surgeon shall select for review those cases that by diagnosis,
19 problem, treatment, or procedure represent, in his or her judgment, the most significant risk to the
20 patient.

21 “(3) Notwithstanding any other provision of law, the Medical Board of California or board
22 may establish other alternative mechanisms for the adequate supervision of the physician
23 assistant.

24 “(d) No medical services may be performed under this chapter in any of the following
25 areas:

26 “(1) The determination of the refractive states of the human eye, or the fitting or adaptation
27 of lenses or frames for the aid thereof.

1 “(2) The prescribing or directing the use of, or using, any optical device in connection with
2 ocular exercises, visual training, or orthoptics.

3 “(3) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to,
4 the human eye.

5 “(4) The practice of dentistry or dental hygiene or the work of a dental auxiliary as defined
6 in Chapter 4 (commencing with Section 1600).

7 “(e) This section shall not be construed in a manner that shall preclude the performance of
8 routine visual screening as defined in Section 3501.”

9 9. Section 3502.1³ of the Code states, in pertinent part:

10 “(a) In addition to the services authorized in the regulations adopted by the Medical Board
11 of California, and except as prohibited by Section 3502, while under the supervision of a licensed
12 physician and surgeon or physicians and surgeons authorized by law to supervise a physician
13 assistant, a physician assistant may administer or provide medication to a patient, or transmit
14 orally, or in writing on a patient’s record or in a drug order, an order to a person who may
15 lawfully furnish the medication or medical device pursuant to subdivisions (c) and (d).

16 “(1) A supervising physician and surgeon who delegates authority to issue a drug order to a
17 physician assistant may limit this authority by specifying the manner in which the physician
18 assistant may issue delegated prescriptions.

19 “(2) Each supervising physician and surgeon who delegates the authority to issue a drug
20 order to a physician assistant shall first prepare and adopt, or adopt, a written, practice specific,
21 formulary and protocols that specify all criteria for the use of a particular drug or device, and any
22 contraindications for the selection. Protocols for Schedule II controlled substances shall address
23 the diagnosis of illness, injury, or condition for which the Schedule II controlled substance is
24 being administered, provided or issued. The drugs listed in the protocols shall constitute the
25 formulary and shall include only drugs that are appropriate for use in the type of practice engaged
26

27 ³ Effective: January 1, 2016. The previous language of section 3502.1, as set forth
28 between January 1, 2013, and December 31, 2015, and as set forth between January 1, 2008, and
 December 31, 2012, underwent stylistic changes but no substantive changes occurred.

1 in by the supervising physician and surgeon. When issuing a drug order, the physician assistant
2 is acting on behalf of and as an agent for a supervising physician and surgeon.

3 “(b) “Drug order” for purposes of this section, means an order for medication which is
4 dispensed to or for a patient, issued and signed by a physician assistant acting as an individual
5 practitioner within the meaning of Section 1306.02 of Title 21 of the Code of Federal
6 Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this
7 section shall be treated in the same manner as a prescription or order of the supervising physician,
8 (2) all references to ‘prescription’ in this code and the Health and Safety Code shall include drug
9 orders issued by physician assistants pursuant to authority granted by their supervising
10 physicians, and (3) the signature of a physician assistant on a drug order shall be deemed to be the
11 signature of a prescriber for purposes of this code and the Health and Safety Code.

12 “(c) A drug order for any patient cared for by the physician assistant that is issued by the
13 physician assistant shall either be based on the protocols described in subdivision (a) or shall be
14 approved by the supervising physician before it is filled or carried out.

15 “(1) A physician assistant shall not administer or provide a drug or issue a drug order for a
16 drug other than for a drug listed in the formulary without advance approval from a supervising
17 physician and surgeon for the particular patient. At the direction and under the supervision of a
18 physician and surgeon, a physician assistant may hand to a patient of the supervising physician
19 and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon,
20 manufacturer as defined in the Pharmacy Law, or a pharmacist.

21 “(2) A physician assistant may not administer, provide or issue a drug order for Schedule II
22 through Schedule V controlled substances without advance approval by a supervising physician
23 and surgeon for the particular patient unless the physician assistant has completed an education
24 course that covers controlled substances and that meets standards, including pharmacological
25 content, approved by the board. The education course shall be provided either by an accredited
26 continuing education provider or by an approved physician assistant training program. If the
27 physician assistant will administer, provide, or issue a drug order for Schedule II controlled
28 substances, the course shall contain a minimum of three hours exclusively on Schedule II

1 controlled substances. Completion of the requirements set forth in this paragraph shall be verified
2 and documented in the manner established by the board prior to the physician assistant's use of a
3 registration number issued by the United States Drug Enforcement Administration to the
4 physician assistant to administer, provide, or issue a drug order to a patient for a controlled
5 substance without advance approval by a supervising physician and surgeon for that particular
6 patient.

7 “(3) Any drug order issued by a physician assistant shall be subject to a reasonable
8 quantitative limitation consistent with customary medical practice in the supervising physician
9 and surgeon's practice.

10 “(d) A written drug order issued pursuant to subdivision (a), except a written drug order in a
11 patient's medical record in a health facility or medical practice, shall contain the printed name,
12 address, and phone number of the supervising physician and surgeon, the printed or stamped
13 name and license number of the physician assistant, and the signature of the physician assistant.
14 Further, a written drug order for a controlled substance, except a written drug order in a patient's
15 medical record in a health facility or a medical practice, shall include the federal controlled
16 substances registration number of the physician assistant and shall otherwise comply with the
17 provisions of Section 11162.1 of the Health and Safety Code. Except as otherwise required for
18 written drug orders for controlled substances under Section 11162.1 of the Health and Safety
19 Code, the requirements of this subdivision may be met through stamping or otherwise imprinting
20 on the supervising physician and surgeon's prescription blank to show the name, license number,
21 and if applicable, the federal controlled substances registration number of the physician assistant,
22 and shall be signed by the physician assistant. When using a drug order, the physician assistant is
23 acting on behalf of and as the agent of a supervising physician and surgeon.

24 “(e) The medical record of any patient cared for by a physician assistant for whom the
25 physician assistant's Schedule II drug order has been issued or carried out shall be reviewed and
26 countersigned and dated by a supervising physician and surgeon within seven days.

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28 ///

1 “(f) All physician assistants who are authorized by their supervising physicians to issue
2 drug orders for controlled substances shall register with the United States Drug Enforcement
3 Administration (DEA).

4 “(g) The board shall consult with the Medical Board of California and report during its
5 sunset review required by Division 1.2 (commencing with Section 473) the impacts of exempting
6 Schedule III and Schedule IV drug orders from the requirement for a physician and surgeon to
7 review and countersign the affected medical record of a patient.”

8 10. California Code of Regulations, title 16, section 1399.540 states, in pertinent part:

9 “(a) A physician assistant may only provide those medical services which he or she is
10 competent to perform and which are consistent with the physician assistant’s education, training,
11 and experience, and which are delegated in writing by a supervising physician who is responsible
12 for the patients cared for by that physician assistant.

13 “(b) The writing which delegates the medical services shall be known as a delegation of
14 services agreement. A delegation of services agreement shall be signed and dated by the
15 physician assistant and each supervising physician. A delegation of services agreement may be
16 signed by more than one supervising physician only if the same medical services have been
17 delegated by each supervising physician. A physician assistant may provide medical services
18 pursuant to more than one delegation of services agreement.

19 “(c) The board or Medical Board of California or their representative may require proof or
20 demonstration of competence from any physician assistant for any tasks, procedures or
21 management he or she is performing.

22 “(d) A physician assistant shall consult with a physician regarding any task, procedure or
23 diagnostic problem which the physician assistant determines exceeds his or her level of
24 competence or shall refer such cases to a physician.”

25 11. California Code of Regulations, title 16, section 1399.541, states, in pertinent part:

26 “Because physician assistant practice is directed by a supervising physician, and a
27 physician assistant acts as an agent for that physician, the orders given and tasks performed by a
28

1 physician assistant shall be considered the same as if they had been given and performed by the
2 supervising physician...

3 "..."

4 12. California Code of Regulations, title 16, section 1399.545, states, in pertinent part:

5 "(a) A supervising physician shall be available in person or by electronic communication at
6 all times when the physician assistant is caring for patients.

7 "(b) A supervising physician shall delegate to a physician assistant only those tasks and
8 procedures consistent with the supervising physician's specialty or usual and customary practice
9 and with the patient's health and condition.

10 "(c) A supervising physician shall observe or review evidence of the physician assistant's
11 performance of all tasks and procedures to be delegated to the physician assistant until assured of
12 competency.

13 "(d) The physician assistant and the supervising physician shall establish in writing
14 transport and back-up procedures for the immediate care of patients who are in need of
15 emergency care beyond the physician assistant's scope of practice for such times when a
16 supervising physician is not on the premises.

17 "(e) A physician assistant and his or her supervising physician shall establish in writing
18 guidelines for the adequate supervision of the physician assistant which shall include one or more
19 of the following mechanisms:

20 "(1) Examination of the patient by a supervising physician the same day as care is given by
21 the physician assistant;

22 "(2) Countersignature and dating of all medical records written by the physician assistant
23 within thirty (30) days that the care was given by the physician assistant;

24 "(3) The supervising physician may adopt protocols to govern the performance of a
25 physician assistant for some or all tasks. The minimum content for a protocol governing
26 diagnosis and management as referred to in this section shall include the presence or absence of
27 symptoms, signs, and other data necessary to establish a diagnosis or assessment, any appropriate
28 tests or studies to order, drugs to recommend to the patient, and education to be given the patient.

1 For protocols governing procedures, the protocol shall state the information to be given the
2 patient, the nature of the consent to be obtained from the patient, the preparation and technique of
3 the procedure, and the follow-up care. Protocols shall be developed by the physician, adopted
4 from, or referenced to, texts or other sources. Protocols shall be signed and dated by the
5 supervising physician and the physician assistant. The supervising physician shall review,
6 countersign, and date a minimum of 5% sample of medical records of patients treated by the
7 physician assistant functioning under these protocols within thirty (30) days. The physician shall
8 select for review those cases which by diagnosis, problem, treatment or procedure represent, in
9 his or her judgment, the most significant risk to the patient;

10 “(4) Other mechanisms approved in advance by the board.

11 “(f) The supervising physician has continuing responsibility to follow the progress of the
12 patient and to make sure that the physician assistant does not function autonomously. The
13 supervising physician shall be responsible for all medical services provided by a physician
14 assistant under his or her supervision.”

15 13. Section 2286 of the Code states, in pertinent part:

16 “It shall constitute unprofessional conduct for any licensee to violate, to attempt to violate,
17 directly or indirectly, to assist in or abet the violation of, or to conspire to violate any provision or
18 term of Article 18 (commencing with Section 2400), of the Moscone-Knox Professional
19 Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the
20 Corporations Code), or of any rules and regulations duly adopted under those laws.”

21 14. Section 2406 of the Code states, in pertinent part:

22 “A medical corporation or podiatry corporation that is authorized to render professional
23 services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its
24 shareholders, officers, directors, and employees rendering professional services who are
25 physicians and surgeons,..., or in the case of a medical corporation only, physician assistants...,
26 are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this
27 article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to the
28 corporation and the conduct of its affairs.

1 “With respect to a medical corporation..., the governmental agency referred to in the
2 Moscone-Knox Professional Corporation Act is the board.”

3 15. Section 13400 of the Corporations Code states, in pertinent part:

4 “This part shall be known and may be cited as the “Moscone-Knox Professional
5 Corporations Act.”

6 16. Section 13401 of the Corporations Code states, in pertinent part:

7 “(a) ‘Professional services’ means any type of professional services that may be lawfully
8 rendered only pursuant to a license, certification, or registration authorized by the Business and
9 Professions Code, the Chiropractic Act, or the Osteopathic Act.”

10 “(b) ‘Professional Corporation’ means a corporation organized under the General
11 Corporation Law or pursuant to subdivision (b) of Section 13406 that is engaged in rendering
12 professional services in a single profession, except as otherwise authorized in Section 13401.5...

13 “...”

14 17. Section 13401.5 of the Corporations Code states, in pertinent part:

15 “Notwithstanding subdivision (d) of the Section 13401 and any other provisions of law, the
16 following licensed persons may be shareholders, officers, directors, or professional employees of
17 the professional corporation designated in this section so long as the sum of all shares owned by
18 those licensed persons does not exceed 49 percent of the total number of shares of the
19 professional corporation so designated therein, and so long as the numbers of those licensed does
20 not exceed the number of persons licensed by the governmental agency regulating the designated
21 professional corporation...”

22 “(a) Medical corporation.

23 “...”

24 “(7) Licensed physician assistants.”

25 18. Section 125 of the Code states, in pertinent part:

26 “Any person, licensed under Division 1 (commencing with Section 100), Division 2
27 (commencing with Section 500), or Division 3 (commencing with Division 5000) is guilty of a
28 misdemeanor and subject to the disciplinary provisions of this code applicable to him or her, who

1 conspires with a person not so licensed to violate any provision of this code, or who, with intent
2 to aid or assist that person in violation those provisions does either of the following:

3 “(a) Allows his or her license to be used by that person.

4 “(b) Acts as his or her agent or partner.”

5 19. Section 2052 of the Code states, in pertinent part:

6 “(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who
7 advertises or holds himself or herself out as practicing, any system or mode of treating the sick or
8 afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment,
9 blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition
10 of any person, without having at the time of so doing a valid, unrevoked, or unsuspended
11 certificate as provided in this chapter or without being authorized to perform the act pursuant to a
12 certificate obtained in accordance with some other provision of law is guilty of a public offense,
13 punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment pursuant to
14 subdivision (h) of Section 1170 of the Penal Code, by imprisonment in a county jail not
15 exceeding one year, or by both the fine and either imprisonment.

16 “(b) Any person who conspires with or aids or abets another to commit any act described in
17 subdivision (a) is guilty of a public offense, subject to the punishment described in that
18 subdivision.

19 “(c) The remedy provided in this section shall not preclude any other remedy provided by
20 law.

21 22 **PERTINENT DRUG INFORMATION**

23 20. Hydrocodone with acetaminophen – Generic name for the drugs Vicodin, Norco, and
24 Lortab. Hydrocodone with acetaminophen is classified as an opioid analgesic combination
25 product used to treat moderate to moderately severe pain. Prior to October 6, 2014, Hydrocodone
26 with acetaminophen was a Schedule III controlled substance pursuant to Code of Federal

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1 Regulations Title 21 section 1308.13(e).⁴ Hydrocodone with acetaminophen is a dangerous drug
2 pursuant to California Business and Professions Code section 4022 and is currently a Schedule II
3 controlled substance pursuant to California Health and Safety Code section 11055, subdivision
4 (b).

5 21. Zolpidem Tartrate – Generic name for Ambien. Zolpidem Tartrate is a sedative and
6 hypnotic used for short term treatment of insomnia. Zolpidem Tartrate is a Schedule IV
7 controlled substance pursuant to Code of Federal Regulations Title 21 section 1308.14(c). It is a
8 Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision
9 (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

10 22. Lorazepam – Generic name for Ativan. Lorazepam is a member of the
11 benzodiazepine family and is a fast acting anti-anxiety medication used for the short-term
12 management of severe anxiety. Lorazepam is a Schedule IV controlled substance pursuant to
13 Code of Federal Regulations Title 21 section 1308.14(c) and Health and Safety Code section
14 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section
15 4022.

16 FIRST CAUSE FOR DISCIPLINE

17 (Gross Negligence-Failure to Supervise)

18 23. Respondent's license is subject to disciplinary action under sections 2234,
19 subdivision (b), 2242, 3502, 3502.1, and 3527 of the Code and Title 16 of the California Code of
20 Regulations sections 1399.540, 1399.541, and 1399.545, in that he committed gross negligence
21 during the care and treatment of Patients J.P. and G.P. by failing to properly supervise Physician
22 Assistant B.M. The circumstances are as follows:

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27 ⁴ On October 6, 2014, Hydrocodone combination products were reclassified as Schedule
28 II controlled substances. Federal Register Volume 79, Number 163. Code of Federal Regulations
Title 21 section 1308.12.

1 24. On or about May 27, 2008⁵, Respondent entered into a four-page Delegation of
2 Services Agreement with Physician Assistant B.M.⁶ Respondent and Physician Assistant B.M.
3 signed the Delegation of Services Agreement. The Delegation of Services Agreement stated that
4 Respondent would audit the medical records for ten percent of the patients managed by Physician
5 Assistant B.M. under protocols adopted pursuant to Title 16 Code of Regulations 1399.545(e)(3).
6 The Delegation of Services Agreement specifically stated at section 4, subdivision (b),

7 “(b) Drug orders shall be either based on protocols established or adopted by Supervising
8 Physician, or shall be approved by Supervising Physician for the specific patient prior to
9 being issued or carried out. Notwithstanding the foregoing, all drug orders for Controlled
10 Substances shall be approved by Supervising Physician for the specific patient prior to
11 being issued or carried out.”

12 25. On June 3, 2008, Physician Assistant B.M.’s wholly owned medical management
13 company entered into a contract with Respondent. The contract stated that Respondent and
14 Physician Assistant B.M. would provide medical services under the protocols and delegation of
15 services agreement set forth and agreed upon by both parties. The contract also stated that
16 Respondent would review ten percent of the charts of the patients seen by Physician Assistant
17 B.M. Respondent would be paid a monthly fee to supervise Physician Assistant B.M. by
18 Physician Assistant’s medical management company. The medical management company would
19 receive a share of the profits from Respondent’s alleged medical practice.

20 26. A document entitled Protocols for Physician Assistant Practice was signed on June 3,
21 2008, by Respondent and Physician Assistant B.M. The protocols set forth three medical
22 reference books as the protocols under which Respondent would be operating, specifically
23 “Current Medical Diagnosis and Treatment,” “Harrison’s Principles of Internal Medicine”, and
24 “Color Atlas and synopsis of clinical Dermatology”. A fourth resource, “Epocrates” was
25 handwritten into the protocols. The protocols did not include any specific directions regarding

26 ⁵ Conduct occurring prior to August 11, 2010, is for informational purposes only, and is
27 not alleged as a basis for disciplinary action. However, on-going violations that occurred after
28 August 11, 2010, as a result of conduct occurring prior to August 11, 2010, is serving as a basis
for disciplinary action.

⁶ All witnesses will be fully identified in discovery.

1 patient care, nor detail any medical procedures that Physician Assistant B.M. was able and/or
2 allowed to perform. The protocols did not include a formulary list for drug orders, guidance on
3 laboratory orders, guidance on screening procedures, and guidance on radiology orders that
4 Physician Assistant B.M. was allowed to perform. The protocols failed to list conditions that
5 Physician Assistant B.M. was qualified and/or allowed to treat. The protocols did not include a
6 list of items setting forth the consultation requirements on Physician Assistant B.M., nor was
7 there specific guidance regarding the prescription of controlled substances by Physician Assistant
8 B.M. despite the Delegation of Services Agreement stating that the, "(d)rug orders shall either be
9 based on protocols established or adopted by Supervising Physician, or shall be approved by
10 Supervising Physician for the specific patient prior to being issued or carried out." The protocols
11 did specifically state, "prior approval of the supervising physician is required before issuing or
12 carrying out any drug order for a controlled substance or a drug that is not specified in the
13 applicable treatment protocol." The protocols were silent regarding how chart review would be
14 accomplished.

15 27. On May 26, 2016, during her subject interview with the Board, Physician Assistant
16 B.M. was asked how the charts were selected for Respondent to review in compliance with the
17 delegation of services agreement. Physician Assistant B.M. admitted that she and the staff at the
18 clinic picked the charts for Respondent to review. She stated that Respondent did not select the
19 charts for review as set forth in the Delegations of Services Agreement. Physician Assistant B.M.
20 stated it was a "missight(sic)" and that she "...was not aware..." that Respondent was supposed
21 to select the charts for review.

22 28. On September 24, 2015, Respondent drafted a response to the Medical Board
23 regarding treatment provided by Physician Assistant B.M. to Patient J.P. Respondent stated that
24 he, "never saw Patient J.P. as a patient, nor had ever treated Patient J.P., nor was he (Patient J.P.)
25 included in any chart reviews that Respondent had co-signed for Physician Assistant B.M. over
26 the years." Respondent also noted in learning that he was vicariously liable for the actions of
27 Physician Assistant B.M., that he, "hope(s) the law can be changed to place more liability on the
28 truly guilty party and less on the unwitting doctor." Finally, Respondent stated, "(t)here are

1 numerous mid-levels who have offices that are de facto independent practices, with only
2 minimum or non-existent supervision in Redding.”

3 29. On May 24, 2016, Respondent was asked how he reviewed Physician Assistant
4 B.M.’s charts as the supervising physician during his subject interview with the Medical Board.
5 Respondent stated that he, “would use her office to see patients when she wasn’t there, and, uh,
6 there would usually be a stack of charts that required her to sign off on for labs, X-ray reports,
7 and so I would review those. And at other times, um, her assistant, uh, would come and bring
8 charts, and I would go over them.” Respondent did not state that he had a procedure for chart
9 selection. During the same interview, Respondent was also asked if he had provided Physician
10 Assistant B.M. with specific or general instructions about the kind of cases he would like her to
11 bring to him for review. Respondent answered, “No.”

12 Patient J.P.

13 30. On November 17, 2010, Physician Assistant B.M. documented her first treatment
14 visit with Patient J.P. All of Physician Assistant B.M.’s chart notes are handwritten on a pre-
15 printed template. The note is signed by Physician Assistant B.M. but is not co-signed by
16 Respondent. Two patient complaints are listed: Patient J.P. suffers from chronic fatigue; and
17 chronic low libido. Patient J.P.’s medical history included a renal cyst from 2008 but notes that
18 Patient J.P. was unable to do follow-up. Physician Assistant B.M. noted that Patient J.P. had a
19 lumbar laminectomy in 1992 and that he uses hydrocodone for pain. She noted that he uses
20 marijuana. Physician Assistant B.M. placed a question mark by sleep apnea but no further history
21 was provided. Physician Assistant B.M. noted that Patient J.P. suffers from hypogonadism and
22 that he has started a testosterone supplement, but dosage and type of the supplement is not listed
23 on the progress note nor is there a current listing of a testosterone blood level in the progress
24 note.⁷ Physician Assistant B.M. did not document if she counseled Patient J.P. that his low
25 testosterone level could be related to chronic pain medication use and/or marijuana use. In the
26 final assessment point on the progress note, Physician Assistant B.M. documented “lbp” for lower

27 ⁷ A blood result for low testosterone was documented in the patient’s medical chart on
28 February 13, 2012, and a topical prescription for testosterone was documented on November 17,
2010, in the patient’s medical record.

1 back pain and noted to continue a prescription of 100 Norco pills with 3 refills. She didn't note
2 whether a back examination was conducted on Patient J.P. to support her finding that he suffered
3 from lower back pain, nor did she list the dosage for the Norco on the progress note. In fact, the
4 information entry area next to the word "Back" in the examination template was left blank.

5 31. Physician Assistant B.M. documented Patient J.P.'s next office visit as occurring on
6 September 26, 2012. Between November 17, 2010, and September 26, 2012, Physician Assistant
7 B.M. prescribed controlled substances to Patient J.P. On April 4, 2011, Physician Assistant B.M.
8 prescribed 100 of 10-325 mg. hydrocodone with acetaminophen pills to Patient J.P. She
9 authorized three refills. The prescription noted that the 100 pills were to last 30 days. On July
10 13, 2011, Physician Assistant B.M. prescribed 100 of 10-325 mg. hydrocodone with
11 acetaminophen pills to Patient J.P. She authorized three refills. The prescription noted that the
12 100 pills were to last 30 days. On July 18, 2011, Physician Assistant B.M. prescribed 30 pills of
13 10 mg. zolpidem tartrate to Patient J.P. She authorized three refills. The prescription noted that
14 the 30 pills were to last 30 days. On October 10, 2011, Physician Assistant B.M. prescribed 30
15 pills of 10 mg. zolpidem tartrate to Patient J.P. She authorized three refills. The prescription
16 noted that the 30 pills were to last 30 days. On November 2, 2011, Physician Assistant B.M.
17 prescribed 100 of 10-325 mg. hydrocodone with acetaminophen pills to Patient J.P. The
18 prescription noted that the 100 pills were to last 30 days. On December 5, 2011, Physician
19 Assistant B.M. prescribed 100 of 10-325 mg. hydrocodone with acetaminophen pills to Patient
20 J.P. The prescription noted that the 100 pills were to last 30 days.

21 32. On March 6, 2012, Physician Assistant B.M. prescribed an increased amount of 120
22 10-325 mg. hydrocodone with acetaminophen pills to Patient J.P. The prescription noted that the
23 120 pills were to last 30 days. She authorized three refills. There is no mention in any of Patient
24 J.P.'s medical records regarding why Patient J.P.'s Norco prescription was being increased, nor is
25 there an office visit to support this increase in dosage. On July 26, 2012, Physician Assistant
26 B.M. prescribed 120 of 10-325 mg. hydrocodone with acetaminophen pills to Patient J.P. The
27 prescription noted that the 120 pills were to last 30 days. On August 29, 2012, Physician
28 Assistant B.M. prescribed 120 tablets of 10-325 mg. hydrocodone with acetaminophen pills to

1 Patient J.P. The prescription noted that the 120 pills were to last 30 days. Also on August 29,
2 2012, Physician Assistant B.M. prescribed 30 pills of 10 mg. zolpidem tartrate and authorized
3 three refills.

4 33. Physician Assistant B.M. failed to document informed consent, document a treatment
5 plan, document a substance abuse history and/or perform a history and good faith physical exam
6 to support the prescribing of controlled substances to Patient J.P. Despite Physician Assistant
7 B.M. prescribing or authorizing refills for a total of 1720 of 10-325 mg. hydrocodone with
8 acetaminophen pills and 360 10 mg. Zolpidem tartrate pills to Patient J.P. between November 17,
9 2010, and September 26, 2012, there is no record that Respondent provided prior approval before
10 she issued these prescriptions. There are no progress notes between November 17, 2010 and
11 September 26, 2012, that support the prescribing of controlled substances to Patient J.P.

12 34. Physician Assistant B.M.'s progress note on September 26, 2012, noted that he was,
13 "back in Redding for 6 months." Physician Assistant B.M. documented that Patient J.P.
14 complained of low back pain and sleep disturbance. A back examination was not documented
15 and the entry area next to the word "back" was left blank in the examination template. Physician
16 Assistant B.M. documented she performed a digital rectal exam but didn't document the reason
17 for why it was performed. Physician Assistant B.M. documented in the center of the page that
18 Patient J.P. had a negative benign biopsy of a lesion left biceps. No further history is given, nor is
19 a skin examination documented. Within her assessment and plan, Physician Assistant B.M. noted
20 that Patient J.P. would continue 120 pills of Norco for lower back pain, and that Patient J.P. had
21 an "atypical" lesion. She noted "cyrotherapy" but didn't provide a description of how many
22 freeze thaw cycles were given, nor did she document that informed consent had been obtained
23 prior to performing cyrotherapy. In the note provided by Physician Assistant B.M. to the Board,
24 the note included a notation that the patient was to "RTS if worsens" if the condition worsened.
25 However, in a copy of the same note obtained by the Board from a surgeon who saw Patient J.P.
26 after his visit with Physician Assistant B.M. on September 26, 2012, the note failed to show any
27 notation which indicates alteration of the record. Physician Assistant B.M. placed "follow-up
28 yearly" in the bottom right hand corner of her note. In 2013, Physician Assistant B.M. would

1 later add an addendum by writing directly on the September 26, 2012, note that Patient J.P. failed
2 to follow-up after learning that Patient J.P. had filed a lawsuit.

3 35. Physician Assistant B.M. failed to document in the September 26, 2012, note a
4 detailed description of the atypical lesion on Patient J.P.'s arm. She failed to note the size, color,
5 border, and elevation. She didn't describe whether it was flat, scaly, or smooth. She didn't
6 describe or diagram the specific location where on the Patient's left arm that the lesion was
7 actually located. While documenting that Patient J.P. reported having a previous negative biopsy
8 on the left biceps, when asked by the Physician Assistant Board, Physician Assistant B.M. stated
9 she felt obtaining the biopsy report was unnecessary, she didn't consider performing a new
10 biopsy, and she was not trained to review prior pathology reports. Physician Assistant B.M.
11 failed to seek consultation with Respondent regarding Patient J.P.'s "atypical" skin lesion.
12 Physician Assistant B.M. chose to destroy the lesion rather than learning more about the
13 composition of the lesion, and admitted in an August 1, 2014, deposition, that she did not know
14 what she had actually treated with cyrotherapy. Finally, Respondent never co-signed the note
15 from September 26, 2012, despite Physician Assistant B.M. treating an atypical lesion with
16 cyrotherapy and her continuing prescription of controlled substances to Patient J.P. The
17 September 26, 2012, note is only signed by Physician Assistant B.M.

18 36. Physician Assistant B.M. documented Patient J.P.'s next office visit with her on
19 September 10, 2013. Between September 26, 2012, and September 10, 2013, Physician Assistant
20 B.M. continued to prescribe controlled substances to Patient J.P. According to pharmacy records,
21 Physician Assistant B.M. either prescribed or authorized refills on 15 separate times to Patient
22 J.P. for a total of 960 pills of 10-325 mg hydrocodone with acetaminophen, and 210 pills of 10
23 mg. zolpidem tartrate. There is no record that Respondent approved any of the prescriptions or
24 refills.

25 37. Between September 26, 2012, and September 10, 2013, Physician Assistant B.M.
26 failed to document informed consent, document a treatment plan, document a substance abuse
27 history and/or perform a history and good faith physical exam to support the prescribing of
28 controlled substances to Patient J.P.

1 38. Before Patient J.P.'s next visit with Physician Assistant B.M., Patient J.P. was seen at
2 the Shasta Community Health Center on June 26, 2013. He made a complaint regarding a lump
3 on his left arm. The treating physician described a lesion that was, "left upper outer extremity
4 with 1.5 cm x 1.5 cm well demarcated, raised, nodular lesion, irregular, some increased
5 vasculature." The treating physician referred Patient J.P. for an excision of the lesion. On
6 August 23, 2013, a surgical pathology report for the removed lesion revealed a diagnosis of
7 melanoma Nodular type 6.6 mm in thickness Clark level IV⁸. By failing to properly treat the
8 skin lesion on September 26, 2012, Physician Assistant B.M. created an eleven month delay in
9 the treatment of Patient J.P.'s melanoma.

10 39. Physician Assistant B.M.'s progress note on September 10, 2013, noted that Patient
11 J.P. had lower back pain. No back examination is documented. A wavy line is drawn through
12 exam and review of systems. Physician Assistant B.M. documented that Patient J.P. has a
13 marijuana certificate. Physician Assistant B.M. documented that Patient J.P. now suffered from
14 melanoma on his left arm and was going to receive surgery in Southern California. Physician
15 Assistant B.M. noted that Patient J.P. had signed an opiate agreement with her clinic and that
16 Norco, quantity of 120 pills, would be continued for Patient J.P.'s lower back pain. Physician
17 Assistant B.M. noted that she recommended Patient J.P. find a Medi-Cal provider for further
18 treatment. The note is signed by Physician Assistant B.M. The note does contain an initialed "J"
19 over the space for Respondent. However, during a May 24, 2016, interview with the California
20 Medical Board, Respondent stated that the initialed "J" that appears on the September 10, 2013,
21 note is not his signature. During an August 1, 2014, deposition, Physician Assistant B.M. stated
22 that she had the authority to sign Respondent's name.

23 40. Physician Assistant B.M. continued to prescribe controlled substances to Patient J.P.
24 following an appointment on September 10, 2013. Between September 10, 2013, and March 7,
25 2014, Physician Assistant B.M. either prescribed or authorized refills for a total of 600 pills of
26 hydrocodone with acetaminophen and a total of 180 pills of zolpidem tartrate. Physician
27 Assistant B.M. failed to document a treatment plan, document a substance abuse history and/or
28

⁸ Refers to the depth of the lesion.

1 perform a history and good faith physical exam to support the prescribing of controlled
2 substances to Patient J.P. On December 10, 2013, Physician Assistant B.M. noted that Patient
3 J.P. was a no show for an appointment, but controlled substance prescriptions and refills
4 continued until March 7, 2014.

5 41. Physician Assistant B.M.'s three chart notes dated November 17, 2010, September
6 26, 2012, and September 10, 2013, do not conform to standard medical record formats. Many of
7 the handwritten notations are illegible and the chief complaint and history of present illness are
8 poorly documented. As noted above, Physician Assistant B.M. failed to describe Patient J.P.'s
9 skin lesion on which she had performed cryotherapy. Physician Assistant B.M. failed to explain
10 why she did a digital rectal exam in the September 26, 2012 chart note. She failed to explain why
11 she was taking Patient J.P.'s oxygen saturations at each visit. Physician Assistant B.M. failed to
12 explain why she put a question mark by Apnea in the November 17, 2010, chart note. Physician
13 Assistant B.M. noted that Patient J.P. suffered from hypogonadism, but failed to document the
14 dosage of the testosterone supplement and the current testosterone blood level in the chart.
15 Physician Assistant B.M. never mentioned in any of the notes that Patient J.P.'s low testosterone
16 levels could be attributable to marijuana and/or chronic pain medication use.

17 Patient G.P.

18 42. On or about May 13, 2009, Physician Assistant B.M. had her initial treatment visit
19 with Patient G.P. Patient G.P.'s chief complaint was documented as "hormone replacement." It
20 was noted that Patient G.P. had undergone a partial hysterectomy 17 years earlier and she
21 complained of mood swings, fatigue, decreased libido, hot flashes, weight gain and cramping at
22 night. Physician Assistant B.M. did not document which muscles caused cramping. On the
23 portion of Physician Assistant B.M.'s note regarding her examination of Patient G.P. there is a
24 pre-printed examination template. On the template, "affect", "eyes", "chest", "cardiac" and
25 "abdomen" were circled "normal" by the Physician Assistant B.M. The word "obese" is circled.
26 Physician Assistant B.M. did not circle anything under ears, sinus, throat, neck or back exam.
27 The review of symptoms template contains two sets of double plus marks and a wavy line
28 through the rest of the columns. Physician Assistant B.M. documented an assessment which

1 included fatigue, hormone replacement, and mood swings. The note was not co-signed by
2 Respondent.

3 43. Physician Assistant B.M. next saw Patient G.P. on November 17, 2010. Patient G.P.
4 had complaints of hand swelling, overall body pain, and joint pains. Physician Assistant B.M.
5 noted vital signs of blood pressure of 132/82, pulse of 101, weight of 227 pounds. Physician
6 Assistant B.M. noted that Patient G.P.'s Vicodin use was increasing and that she was taking 4 to
7 6 Aleve⁹ daily. Physician Assistant B.M. noted that the patient suffered from dyspepsia.
8 Physician Assistant B.M. noted that Patient G.P. had previously undergone gastric bypass surgery
9 4 years earlier. Finally, Physician Assistant B.M. noted that Patient G.P. is taking Cymbalta, that
10 she feels bipolar, that she was having hot flashes, and mood swings. Physician Assistant B.M.'s
11 exam was recorded on a template. "Affect", "Chest", and "Cardia" are the only items that are
12 circled. There is no documentation of hand or joint examinations. The review of systems
13 documents two plus signs by fatigue, a question mark by "Apnea", and a wavy line through the
14 rest of the column. Despite Patient G.P. being on Metoprolol, a medication to lower blood
15 pressure and pulse rate, Patient G.P.'s pulse remained elevated.

16 44. Physician Assistant B.M.'s assessment for the visit included the following:

17 "Mood disorder continue Cymbalta
18 Suspect PCOS¹⁰ needs progesterone, consider metformin
19 Hypertension decrease Metoprolol, continue Lisinopril 20/25
20 Fatigue, decrease Metoprolol
21 Gastric reflux, continue Zantac
22 Generalized pain, LBP¹¹; Discontinue Vicodin, use Norco 10/325 #180 max 6 a day with
23 3 refills
24 Prior bariatric surgery → still obese discuss weight loss diet changes
25 Getting mammogram."

26 Physician Assistant B.M. failed to document any information in her note to support her
27 finding that Patient G.P. suffered from PCOS. Physician Assistant B.M. failed to document
28 whether she addressed Patient G.P.'s complaint of hand swelling, joint pain or apnea. Physician

⁹ Aleve is the trade name for naproxen sodium, an over-the-counter nonsteroidal anti-inflammatory drug

¹⁰ Polycystic ovarian syndrome.

¹¹ Lower back pain.

1 Assistant B.M. didn't document whether she performed a hand and joint examination. Physician
2 Assistant B.M. didn't document whether she notified the patient that Aleve is contraindicated in a
3 former gastric bypass patient due to a high risk of ulcers. Finally, despite issuing a prescription
4 for 180 tablets of 10-325 mg. hydrocodone with acetaminophen tablets to Patient G.P., Physician
5 Assistant B.M. failed to document a good faith exam, a treatment plan, a substance abuse history,
6 informed consent, or a periodic review of prior controlled substance treatments. The note was not
7 co-signed by Respondent and there is no indication that he approved Physician Assistant B.M.'s
8 Norco prescription. Physician Assistant B.M. continued prescribing controlled substances to
9 Patient G.P. for the next 4 years.

10 45. The next visit occurred on April 12, 2011. On February 17, 2011, Physician Assistant
11 B.M. had authorized a refill of 45 10 mg. tablets of Zolpidem for Patient G.P. The authorization
12 mentioned a former physician assistant K.B. as the initial prescribing provider. There was no
13 mention of a zolpidem tartrate prescription in Physician Assistant B.M.'s prior progress note
14 dated November 17, 2010. Physician Assistant B.M. documented Patient G.P.'s chief complaint
15 as recurrent urinary tract infection and that "something (was) falling out" after bowel movements.
16 Physician Assistant B.M.'s documented additional medical history for Patient G.P. which
17 includes, "Mom breast cancer" and the patient has a history of prior bladder suspension surgery.
18 Patient G.P.'s vital signs included a blood pressure of 92/64, pulse of 103, and her weight was
19 215.8 pounds. Physician Assistant B.M.'s documentation of the physical examination is limited.
20 She circled "eyes", "chest", "cardiac", and "abdomen" as normal. A urine test result indicated a
21 bladder infection. Physician Assistant B.M. documented that a pelvic exam was completed that
22 was grossly normal and that she suspected possible rectocele.

23 46. In the assessment portion of the note, Physician Assistant B.M. documented: "1.
24 urinary tract infection, start Cipro #14 and continue Macrobid 100 mg after initial treatment; 2.
25 Menopausal continue estradiol and 3. Atrophic vaginitis." Physician Assistant B.M. didn't
26 document ordering a urine culture. While Physician Assistant B.M. documented that the pelvic
27 exam was grossly normal, she documented that she still suspected a possible rectocele despite the
28

1 presence of rectocele being plainly obvious during a pelvic exam. The note is not cosigned by
2 Respondent.

3 47. On May 12, 2011, Physician Assistant B.M. provided a prescription and three refills
4 of 180 pills of 10-325 mg. hydrocodone with acetaminophen to Patient G.P. The prescription was
5 previously filled on April 15, 2011, according to the refill authorization request. On July 18,
6 2011, Physician Assistant B.M. provided a prescription with three refills for 45 pills of 10 mg.
7 zolpidem tartrate to Patient G.P. Physician Assistant B.M. next saw Patient G.P. in the office on
8 August 16, 2011. Physician Assistant B.M. documented Patient G.P.'s vital signs as weight of
9 226.4 pounds, pulse of 77, and a blood pressure of 124/90. Physician Assistant B.M. noted that
10 Patient G.P. was relocating to Santa Cruz. Physician Assistant B.M. documented that Patient
11 G.P. has high anxiety but sleeping well, suffers from chronic pain, has less leg cramps, continues
12 on Estradiol, Norco is helpful for pain and that she has dysuria. Physician Assistant B.M.
13 documented that Patient G.P. was on Cymbalta but that it was not helpful.

14 48. In the examination template, Physician Assistant B.M. circled chest, eyes, cardiac and
15 obese. The symptoms include a plus sign by fatigue and a wavy line through the rest of the
16 symptoms. Physician Assistant B.M. documented an assessment and plan as follows: 1. Anxiety,
17 taper Cymbalta add Prozac; 2. Recurrent UTI, prescribe Macrobid for post intercourse
18 prophylaxis and Keflex; and, 3. Fibromyalgia LBP, Cymbalta not helpful. Physician Assistant
19 B.M. noted a new prescription for 240 pills of 10-325 mg. Norco with four refills. Physician
20 Assistant B.M. filled out prescriptions for Prozac and Norco and provided them to Patient G.P.
21 Despite increasing Patient G.P.'s hydrocodone with acetaminophen dosage, the note appears to
22 not be co-signed by Respondent and didn't document the reasons supporting the increase.
23 Physician Assistant B.M. failed to document whether a urine culture or urinalysis was ordered to
24 verify Patient G.P.'s urinary tract infection.

25 49. In addition to the progress notes detailed above, Physician Assistant B.M. saw Patient
26 G.P. in the clinic on November 16, 2011, February 13, 2012, September 26, 2012, and, January 7,
27 2013. During that time Physician Assistant B.M. continued to prescribe hydrocodone with
28 acetaminophen and zolpidem tartrate to Patient G.P. The only progress note that appears to be

1 cosigned is dated February 13, 2012. In the note dated February 13, 2012, Physician Assistant
2 B.M. documented under assessment that Patient G.P. may have a, "possible narcotic addiction?"
3 and under medical history noted that she was "non compliant to meds history." As described
4 above, Physician Assistant B.M.'s progress notes contained illegible words, and lack sufficient
5 detail in recording Patient G.P.'s history, review of systems and prior examination to provide
6 information to a subsequent medical provider. Physician Assistant B.M.'s notes fail to document
7 a good faith exam, a treatment plan, a substance abuse history, informed consent, or a review of
8 prior controlled substance treatments, despite on-going controlled substance therapy.

9 50. On July 3, 2012, Physician Assistant B.M. approved a prescription for Prozac for
10 Patient G.P. and noted that Patient G.P. "no longer lives in Redding. One (refill) only needs to set
11 herself a local provider." Despite last seeing Patient G.P. in the clinic on January 7, 2013, and
12 documenting at that time that she "must be seen every three months for narcotics" and "needs to
13 set new provider", Physician Assistant B.M. continued to prescribe or refill controlled substances
14 to Patient G.P. without clinical visits. In January 2013, Physician Assistant B.M. prescribed
15 and/or refilled 150 pills of 10/325 mg. hydrocodone with acetaminophen, 30 pills of .5 mg
16 Lorazepam, and 45 pills of 10 mg. zolpidem tartrate to Patient G.P. In February 2013, Physician
17 Assistant B.M. prescribed and/or refilled 150 pills of 10/325 mg. hydrocodone with
18 acetaminophen, 30 pills of .5 mg Lorazepam, and 45 pills of 10 mg. zolpidem tartrate to Patient
19 G.P. In March 2013, Physician Assistant B.M. prescribed and/or refilled 150 pills of 10/325 mg.
20 hydrocodone with acetaminophen, 30 pills of .5 mg Lorazepam, and 45 pills of 10 mg. zolpidem
21 tartrate to Patient G.P. In April 2013, Physician Assistant B.M. prescribed and/or refilled 150
22 pills of 10/325 mg. hydrocodone with acetaminophen, and 45 pills of 10 mg. zolpidem tartrate to
23 Patient G.P. In May 2013, Physician Assistant B.M. prescribed and/or refilled 150 pills of 10/325
24 mg. hydrocodone with acetaminophen, 30 pills of .5 mg Lorazepam, and 45 pills of 10 mg.
25 zolpidem tartrate to Patient G.P. In June 2013, Physician Assistant B.M. prescribed and/or
26 refilled 150 pills of 10/325 mg. hydrocodone with acetaminophen, 30 pills of .5 mg Lorazepam,
27 and 45 pills of 10 mg. zolpidem tartrate to Patient G.P. In July 2013, Physician Assistant B.M.
28 prescribed and/or refilled 150 pills of 10/325 mg. hydrocodone with acetaminophen, and 45 pills

1 of 10 mg. zolpidem tartrate to Patient G.P. In August 2013, Physician Assistant B.M. prescribed
2 and/or refilled 150 pills of 10/325 mg. hydrocodone with acetaminophen, 30 pills of .5 mg
3 Lorazepam, and 45 pills of 10 mg. zolpidem tartrate to Patient G.P. In September 2013,
4 Physician Assistant B.M. prescribed and/or refilled 150 pills of 10/325 mg. hydrocodone with
5 acetaminophen, and 30 pills of .5 mg Lorazepam to Patient G.P. In October 2013, Physician
6 Assistant B.M. prescribed and/or refilled 45 tablets of zolpidem tartrate to Patient G.P. In
7 November 2013, Physician Assistant B.M. prescribed and/or refilled 150 pills of 10/325 mg.
8 hydrocodone with acetaminophen, and increased the prescription to 60 pills of .5 mg Lorazepam
9 to Patient G.P. In December 2013, Physician Assistant B.M. prescribed and/or refilled 150 pills
10 of 10/325 mg. hydrocodone with acetaminophen, and 45 pills of 10 mg. zolpidem tartrate to
11 Patient G.P. In January 2014, Physician Assistant B.M. prescribed and/or refilled 150 pills of
12 10/325 mg. hydrocodone with acetaminophen, and 45 pills of 10 mg. zolpidem tartrate to Patient
13 G.P.

14 51. Physician Assistant B.M.'s final refill to Patient G.P. was on February 18, 2014,
15 when she prescribed and/or refilled 45 tablets of 10 mg zolpidem tartrate and 150 tablets of
16 10/325 mg. hydrocodone with acetaminophen. In addition, Physician Assistant B.M. prescribed
17 60 tablets of .5 mg. lorazepam to Patient G.P. on February 10, 2014. Physician Assistant B.M.
18 documented on the pharmacy printout that this was the, "last refill, must find new provider."
19 Physician Assistant B.M. failed to document a good faith exam, a treatment plan, a substance
20 abuse history, informed consent, or a periodic review of prior controlled substance treatments
21 despite providing controlled substances to Patient G.P. between January 7, 2013, and February
22 18, 2014. None of the prescriptions between January 7, 2013, and February 18, 2014, were co-
23 signed and/or approved by Respondent.

24 52. Respondent's treatment of Patient J.P. and G.P. by failing to properly and adequately
25 supervise his agent, Physician Assistant B.M., as described above represents an extreme departure
26 from the standard of care in each of the following ways: (A.) by failing to ensure that the
27 Delegation of Services Agreement and Protocols conformed with the Business and Professions
28 Code and Physician Assistant Regulations; (B.) by failing to properly review Physician Assistant

1 B.M.'s medical charts as set forth in the Delegation of Services Agreement; (C.) by failing to
2 provide prior physician approval for controlled substance prescriptions for Patients J.P. and G.P.;
3 (D.) by failing to monitor Physician Assistant B.M. as she provided over a year of controlled
4 substance prescriptions to Patient G.P. without seeing Patient G.P. in the clinic; (E.) by failing to
5 monitor Physician Assistant B.M.'s treatment of the atypical skin lesion on Patient J.P.'s arm
6 which led to a lengthy delay in the treatment of melanoma; and, (F.) by failing to monitor
7 Physician Assistant B.M.'s medical decision making during her treatment of Patient G.P. and J.P.,
8 including but not limited to, Physician Assistant B.M. diagnosing Patient G.P. as having PCOS
9 and as having a possible rectocele despite performing a grossly normal pelvic exam.

10 SECOND CAUSE FOR DISCIPLINE

11 (Prescribing without a Good Faith Examination)

12 53. Respondent's license is subject to disciplinary action under section 2242, 2234,
13 subdivision (a), and 3502.1, of the Code in that he failed to properly monitor his agent, Physician
14 Assistant B.M., while she prescribed controlled substances without a good faith examination.
15 The circumstances are as follows:

16 54. Complainant re-alleges paragraphs 23 through 52, and those paragraphs are
17 incorporated by reference as if fully set forth herein.

18 55. As more fully set forth in paragraphs 23 through 52, Respondent repeatedly failed to
19 provide adequate supervision to his agent, Physician Assistant B.M., who repeatedly prescribed
20 controlled substances without performing a good faith examination.

21 THIRD CAUSE FOR DISCIPLINE

22 (Inadequate Record Keeping)

23 56. Respondent's license is subject to disciplinary action under section 2266 of the Code
24 in that he failed to provide adequate supervision to ensure that Physician Assistant B.M.
25 maintained adequate and accurate records related to the provision of medical services to Patients
26 J.P. and G.P. The circumstances are as follows:

27 57. Complainant re-alleges paragraphs 23 through 52, and those paragraphs are
28 incorporated by reference as if fully set forth herein.

1 58. As more fully set forth above, Respondent failed to ensure that his agent, Physician
2 Assistant B.M. was keeping adequate and accurate medical records for Patients J.P. and G.P.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 (Conspiracy to Violate Moscone-Knox Professional Corporation Act)

5 59. Respondent's license is subject to disciplinary action under sections 125, 2234, 2286,
6 2406, of the Code and sections 13400, 13401, and 13401.5 of the Corporations Code in that he
7 conspired with Physician Assistant B.M., so she could operate a "medical management" general
8 corporation entitled "Massey Management Corporation" as a medical corporation, in violation of
9 the Moscone-Knox Professional Corporations Act. The circumstances are as follows:

10 60. Complainant re-alleges paragraphs 23 through 52, and those paragraphs are
11 incorporated by reference as if fully set forth herein.

12 61. On December 17, 2009, Physician Assistant B.M. incorporated Massey Management
13 Corporation as general corporation in the State of California by filing Articles of Incorporation
14 with the Secretary of State's Office. On February 1, 2010, Physician Assistant B.M. filed a
15 Statement of Information with the Secretary of State's Office which stated that the type of
16 business of the "Massey Management" corporation was "Physician Assistant." On January 27,
17 2014, Physician Assistant B.M. filed a Statement of Information with the Secretary of State's
18 Office which stated that the type of business of the "Massey Management" corporation was
19 "medical." The January 27, 2014, Statement of Information specifically identified the Churn
20 Creek clinic as the address of operation and identified Physician Assistant B.M. as the Chief
21 Executive Officer. The Medical Board does not have any record of a fictitious name permit being
22 issued for "Massey Management Corporation" to either Respondent or Physician Assistant B.M.

23 62. On or about October 7, 2009, Physician Assistant B.M. signed a contract entitled
24 "Agreement Between Dr. Julian Fuentes, M.D. and Physician Assistant B.M. P.A.-C."
25 ("contract") in her individual capacity as a licensee. Respondent signed the contract on or about
26 October 16, 2009.¹² By the terms of the agreement, the contract would automatically renew

27 ¹² As noted above this contract remained in place and renewed until 2014. It is the
28 Board's contention that all activities under this contract remained an ongoing and continuous

1 unless a party provided 60 days notice of termination. The contract was expressly for the
2 "purpose of defining the relationship and obligations between Dr. Julian Fuentes and Physician
3 Assistant B.M. P.A.-C. in providing medical services at 3330 Churn Creek Road # D-4, Redding,
4 California 96002."

5 63. Article 3 of the contract stated that billing services would be through a billing service
6 corporation named CPR. Article 4 of the contract stated,

7 "(t)he supervising physician **may use** the office facilities to see patients, as well as the
8 business address and phone number upon mutually agreeable terms. Wednesday and
9 Friday afternoons. The front office staff and back office staff **will also be available for**
10 **your use** on the above stated days. Until further changes are agreed upon." (emphasis
11 added)

12 Article 5 of the contract stated,

13 "(t)he supervising physician's monthly **fee for this practice is \$1000.00** (one thousand
14 dollars) (sic) This fee is due and payable on the 1st of each month. Physician shall review
15 10% of the charts on patients seen by Physician Assistant B.M. P.A.-C. on a weekly or
16 biweekly basis." (emphasis added)

17 Article 6 of the contract stated,

18 "(p)hysician and PA shall be responsible to pay their own taxes to the IRS and California
19 State Franchise Board. Each provider is also responsible for his own **License fees**, vacation
20 time, health insurance and association fees. Each party will pay of (sic) his or her own
21 business license." (emphasis added)

22 Article 7 of the contract stated,

23 "(e)ach provider is responsible for **their own patient's charts**, which must be stored for 3-
24 5 years."

25 ///

26 ///

27 ///

28 ///

violation of the law until Respondent and Physician Assistant B.M. severed their business
relationship.

64. On August 1, 2014, Physician Assistant B.M. testified as a witness at a deposition in a civil action entitled Patient J.P. and G.P. vs. J.F., M.D. et. al. Physician Assistant B.M. was a named defendant. During questioning by plaintiff's counsel, Physician Assistant B.M. stated that she had a joint account at Wells Fargo with Respondent entitled "Physician Assistant B.M., PA-C." A review of subpoenaed bank records by the Board revealed an account with an identification number ending in "1812". Physician Assistant B.M. stated that while both she and Respondent had the authority to write checks from the account ending in "1812", Physician Assistant B.M. wrote 100 percent of the checks issued from the account. Physician Assistant B.M. stated that all medical services at 3330 Churn Creek Road,¹³ were billed under Respondent's medical provider number. Because all services were billed under Respondent's medical provider number, all income was payable to Respondent and was deposited in the account ending in "1812". Physician Assistant B.M. then dispersed the money from the account ending in "1812." A review of the account statements and checks written on account ending in "1812" revealed that Physician Assistant B.M. paid a mid-level health practitioner, D.L., and Respondent, directly out of that account for the patient services that they provided each month.¹⁴ Physician Assistant B.M. also transferred money from the account ending in "1812" to a separate Wells Fargo account entitled "Massey Management Corporation." Physician Assistant B.M. stated that she transferred both the money she had earned providing patient services to her patients and the money that was required to pay the office expenses at the Churn Creek Medical clinic to the account entitled "Massey Management Corporation."

¹³ At different times the Churn Creek Clinic was housed in two different suites at the 3330 Churn Creek Road address. For sake of clarity, Churn Creek Clinic is meant to refer to both suite locations that existed at 3330 Churn Creek during the time that Respondent and Dr. J.F. were engaged in a business relationship.

¹⁴ By way of example, Respondent signed the following checks to D.L. and Dr. J.F. out of the account ending "1812."

Check Number	Date	Payee	Amount
1477	12-5-2013	D.L.	\$14,727.14
1480	1-7-2014	D.L.	\$14,077.09
1482	2-13-2014	D.L.	\$10,325.81
1484	3-11-2014	D.L.	\$13,738.67
1478	1-6-2014	Dr. J.F.	\$21,443.57
1481	2-5-2014	Dr. J.F.	\$15,263.79
1483	3-5-2014	Dr. J.F.	\$17,486.37

65. Physician Assistant B.M.'s Wells Fargo account entitled "Massey Management Corporation" had an account number that ended in "4444". The account ending in "4444" was controlled by Physician Assistant B.M. Physician Assistant B.M. withdrew money from the account ending in "4444" and paid herself income. She also used account ending in "4444" to pay for all of the Churn Creek clinic expenses. Clinic expenses paid for by Physician Assistant B.M. included but was not limited to the building lease, office supplies, billing services, phone bills, and employee salaries. Physician Assistant B.M. admitted that Respondent paid no office costs at the Churn Creek clinic. Physician Assistant B.M. also paid herself out of the account ending in "4444" for the patient services that she herself had provided. Physician Assistant B.M. also paid personal expenses out of account ending "4444" including a Department of Motor Vehicle renewal, her physician assistant license fee, and her corporation filing fee.¹⁵ Finally, Physician Assistant B.M. paid Respondent \$1,000.00 a month out of account ending "4444" to supervise her and D.L. at the clinic.¹⁶

66. At the deposition on August 1, 2014, Physician Assistant B.M. was asked who owned the clinic and she responded that it was "unclear". She clarified saying that "we don't know who owns it." Physician Assistant B.M. stated that mid-level practitioner D.L. reimbursed Physician Assistant B.M. for half of the Churn Creek clinic expenses and operated as a self-employed individual. Physician Assistant B.M. admitted that she never talked to the Board about her business practices. Physician Assistant B.M. admitted that she was "running" the practice.

¹⁵ By way of example, here are three checks Respondent wrote for personal expenses as set forth in the October 2009 contract.

Check Number	Date	Payee	Amount
1732	7-9-2012	DMV	\$364.00
2094	12-31-2013	State of California	\$25.00
2114	1-29-2014	PA Board License	\$300.00

¹⁶ By way of example, here are four checks written by Respondent out of account ending "4444" to pay Dr. J.F. his supervision fee.

Check Number	Date	Payee	Amount
1627	11-4-2013	Dr. J.F.	\$1000.00
2096	1-6-2014	Dr. J.F.	\$1000.00
2115	2-3-2014	Dr. J.F.	\$1000.00
2130	3-5-2014	Dr. J.F.	\$1000.00

1 Physician Assistant B.M. stated she had the authority to sign Respondent's name on both business
2 documents and on medical charts.

3 67. Respondent's license is subject to disciplinary action because he conspired with
4 Physician B.M. to violate the Moscone-Knox Professional Corporations Act by having Physician
5 B.M. operate a general corporation (Massey Management Corporation) as a medical corporation
6 at the Churn Creek clinic location as evidenced by, but not limited to:

7 (a.) By allowing Physician B.M. to operate a general corporation, "Massey
8 Management Corporation" as a medical corporation while she remained the sole
9 shareholder;

10 (b.) By allowing Physician Assistant B.M. to provide medical care and treatment to
11 patients without following the requirements as set forth in the Delegation of Services
12 Agreement and Protocol with Respondent;

13 (c.) By allowing Physician Assistant B.M. to have personal control of all funds and
14 assets;

15 (d.) By allowing Physician Assistant B.M. to pay Respondent a supervision fee and
16 converting him to an independent contractor under the control of Massey
17 Management Corporation;

18 (e.) By allowing Physician Assistant B.M. to have personal control of all facilities at
19 the Churn Creek clinic location;

20 (f.) By allowing Physician Assistant B.M. to have personal control of medical charts
21 despite being a Physician Assistant;

22 (g.) By allowing Physician Assistant B.M. to have personal control and authority over
23 all unlicensed medical staff at the Churn Creek clinic location; and

24 (h.) By entering into a business relationship with Physician Assistant B.M. in her
25 individual capacity as a Physician Assistant and not as a Physician Assistant
26 Corporation.

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28 ///

1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Conspiracy to Commit the Unlicensed Practice of Medicine)

3 68. Respondent's license is subject to disciplinary action under section 2052 of the Code
4 in that he conspired to allow Physician Assistant B.M. to practice medicine without a license
5 while providing medical services to Patients J.P. and G.P. The circumstances are as follows:

6 69. Complainant re-alleges paragraphs 23 through 67, and those paragraphs are
7 incorporated by reference as if fully set forth herein.

8 70. As more fully set forth above, Respondent conspired with Physician B.M. to allow
9 her to practice medicine without a license.

10 **PRAYER**

11 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Medical Board of California issue a decision:

13 1. Revoking or suspending Physician's and Surgeon's Certificate No. Number G 45631,
14 issued to Julian Robert Fuentes, M.D.;

15 2. Revoking, suspending or denying approval of Julian Robert Fuentes, M.D.'s authority
16 to supervise physician assistants, pursuant to section 3527 of the Code, and advanced practice
17 nurses;

18 3. Ordering Julian Robert Fuentes, M.D., if placed on probation, to pay the Board the
19 costs of probation monitoring; and

20 4. Taking such other and further action as deemed necessary and proper.

21
22 DATED: August 7, 2017


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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